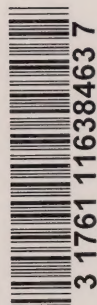


Statement

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SPEAKING NOTES

FOR AN APPEARANCE BEFORE

THE CANADIAN RADIO-TELEVISION AND

TELECOMMUNICATIONS COMMISSION BY

THE DIRECTOR OF INVESTIGATION AND RESEARCH

GEORGE N. ADDY

BUREAU OF COMPETITION POLICY

HULL, QUEBEC, MARCH 16, 1995



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Good morning Mr. Chairman and members of the Commission.

It is a pleasure to appear before you today. As Director of Investigation and Research under the *Competition Act*, I welcome this opportunity to participate in your public consultation process.

As Director, I am responsible for the administration and enforcement of the *Competition Act*. In addition to the authority to conduct inquiries, the *Competition Act* also empowers the Director to intervene before federal regulatory agencies to make independent representations in respect of competition. This authority has been exercised in numerous proceedings before the Commission in which the Director has represented the benefits to the public of opening telecommunications markets to competition.

With me this morning are Dr. Steven Globerman from Simon Fraser University, Dr. Robert Crandall of the Brookings Institution, and David M^cAllister from the Bureau of Competition Policy. Dr. Crandall is of course no stranger to the Commission having testified previously on behalf of the Bureau in the telecommunications long distance and regulatory framework proceedings. We are also accompanied by our legal counsel, Mr. Lorne Abugov, of Osler, Hoskin & Harcourt.

As you know, Dr. Globerman and Dr. Crandall, together with Gregory Sidak, authored independent reports which

accompanied our Stage I submission which was filed on January 16th. I am pleased that we have been able to arrange for Dr. Globerman and Dr. Crandall, both expert economists with a background in communications, to be here today to respond to your questions. Mr. M^cAllister coordinated the preparation of the Bureau's January 16th submission and the February 13th reply comments. We look forward to the dialogue which will flow from your questions this morning.

Before we begin, I would like to make a few short remarks regarding our previous submissions and respond to some of the points which have been raised in the Stage II comments and oral evidence of other parties.

In particular, I would like to address why it is my belief that competition should be the driving force behind the development of Canada's transition to an information economy. I would also like to comment on some of the issues which have arisen in the oral hearings over the past two weeks, including the reconsideration by the Canadian Cable Television Association (CCTA) of its proposal for a seven year transition period to full competition. Finally I would also like to make some brief observations on the question of competitive safeguards and the role of the *Competition Act*.

Having had an opportunity to consider the submissions of some of the other parties to this proceeding, we have supplemented our initial recommendations. In particular, the Bureau agrees with parties such as Rogers Communications and the Canadian Satellite Users Association on the

importance of price caps as a competitive safeguard.

Accordingly, we recommended in our reply comments that the Commission should consider accelerating the time table for introducing price cap regulation for utility telecommunications services. In addition, in light of comments contained in Stentor's initial submission, we now recommend that competition and the development of the information highway would be facilitated by transferring ownership of inside cable and telephone wiring to subscribers.

Universality

We found the reply comments of other parties equally illuminating. One issue which has been at the forefront of many submissions and which was not addressed directly in our written comments is access and affordability for low income Canadians, those living in remote or rural areas of the country, or those with special needs, to what may emerge as essential services in a new information based economy. In my view, the issue of universal service raises several difficult questions:

First, which, if any, services that will be provided on broadband networks can be considered "essential" and what criteria should be used to distinguish between essential and non-essential services? Secondly, will any form of government action be required in order to ensure some minimal level of universal access to essential services or can competition, private sector initiatives and technological innovation be relied upon to achieve acceptable levels of

service? Finally, if government action is required, what alternative policy mechanisms are available to achieve universal service objectives in an effective and efficient manner?

I doubt if anyone has the definitive answers to these questions, however, I would make these observations. First, in respect of the question of essential services, it may not be possible to determine today what tomorrow's demand for communication and multimedia services and applications will be. If it is premature to conclude now what services will or will not emerge as essential, it may be prudent to let the marketplace play its role in making this determination. Allowing competitive markets to develop for the distribution of all communications services will exert pressure to minimize the costs of providing services. In addition, technological innovation may assist with achieving desired levels of access and affordability. For example, innovation in wireless or satellite communications may facilitate the delivery of broadband services to Canadians in rural and remote areas at reasonable cost.

While I believe that market forces should be relied upon to the maximum extent possible to provide access to essential services at affordable cost, I also recognize that additional measures may be required in order to meet these social objectives. In this regard, I would caution against the imposition of universal service obligations on distribution undertakings, whether they be the telephone companies, the cable industry or otherwise. As current experience in the

telecommunications sector demonstrates, such obligations may not be consistent with the operation of competitive and efficient markets and would require significant regulatory oversight.

I believe that more targeted initiatives should be considered by the Commission. The provision of broadband services through public libraries, community centres, educational institutions, and government offices may be a cost-effective means of providing access for members of the public who may lack the means to afford direct access. There may well be others. I would simply urge caution in dismissing less intrusive means of achieving the desired objectives.

Competition

Virtually all of the parties that have filed submissions in this proceeding state that they are in favour of competition in the formation of the Information Highway. However, many of these parties have qualified their support for competition by advocating delays in the removal of regulatory barriers or proposing that new entrants and new services should be subject to detailed regulation. The issue is how much competition and when. In considering these submissions, it is important to bear in mind that throughout our economy competition is the rule and regulation is the exception. I do not accept, as some have suggested, that those who advocate a pro-competition approach to Canada's information highway have an onus to demonstrate the benefits of competition. The Government has already stated in the Order

in Council that competition in facilities, content and services is one of the main pillars of its information highway strategy. Therefore, the onus, I believe, should be on those who advocate continued or more expansive regulation to demonstrate that competition is not capable of serving the public interest.

Competition lies at the cornerstone of our free market economy. It brings diversity, choice, freedom of expression, and innovation -- important ingredients for Canadians as they begin to present their own ideas and cultures to the world over silicon and glass fibre networks and through the electromagnetic spectrum.

If Canada is to compete in the global information economy, its people, firms and institutions must operate to the maximum of their abilities. Free and open competition among content and distribution providers will ensure that the Information Highway operates in an efficient and effective manner to the benefit of all Canadians. At this time, one must look beyond the issue of protecting the regulatory entitlements of incumbents and focus on the new realities in technology, trade and consumer expectations.

There are a number of basic principles which underlie my support for policies favouring opening up communications markets to increased competition. First, the technological assumptions on which economic regulation has been based are no longer valid in a world of ever expanding bandwidth. Secondly, the rapid development of the new information

technologies is undermining the ability of governments and regulators everywhere to control the flow of events.

As the Commission itself noted in its telecom regulatory framework decision, telecommunications technologies are creating electronic marketplaces and virtual communities that transcend geographic boundaries. Underlying these phenomena, as the Commission further noted, is a "political, economic and cultural revolution, in which Canadians are redefining themselves and their business, social and institutional environment in ways that outpace the ability of regulators to recognize and define, let alone control."

Most of the submissions in this proceeding have discussed in one way or another the expected benefits and importance of the information economy to our society. The Bureau is no exception. However, one of the issues we have tried to highlight in this debate, in part through the advice of Dr. Crandall and Mr. Sidak, is that no one currently knows which network or networks will be technologically and financially viable in the foreseeable future. Moreover, consumer demand for potential new products and services is highly uncertain and price sensitive. These conclusions are supported by a number of submissions and market surveys filed in this proceeding.

Rapidly changing technologies together with global competition and the risk and uncertainty associated with the development of the information economy are undermining the need for economic regulation and the ability of regulators to

regulate. Regulators or policy makers must think very carefully before implementing regulatory policies for the Information Highway because the cost associated with limiting choice can be great.

Given this environment, I would urge that we ensure that competition and market forces play their vital role in determining the evolution of Canada's communications sector. This proceeding is not confined to programming and entertainment issues, but has implications for our entire economy. Likewise, this proceeding is not, as many have portrayed it, about resolving a turf war or dividing up an economic pie between the cable television and telephone companies. The overriding objective is one of establishing a regulatory framework which is appropriate to the new communications technologies of the 21st century and which best ensures that Canadians achieve the full benefits which these technologies promise.

The Cable Industry

The Bureau of Competition Policy's interest in competition favours neither the telephone companies nor the cable companies. The Bureau has strongly supported the Commission's decisions to open long distance and local telecommunications markets to competition. Where further measures, such as number portability and access to support structures, are required to facilitate entry into these markets, I would support any initiatives the Commission might take to promote the development of competitive markets. In this

regard, I would note that the Bureau has recently taken initiatives to secure cable company access to support structures controlled by telephone companies in Alberta and New Brunswick to assist the cable industry in building fibre optic networks.

I do not, however, believe that a convincing case has been made that the public interest will best be served by insulating the cable television industry from competition for any transition period and certainly not one lasting seven years or longer. The CCTA has of course withdrawn its request that the Commission recommend a seven year prohibition on telephone company entry into core cable services. Rather than a fixed time frame for competition, the CCTA now advocates that competition in their markets should be allowed when (i) local telephone markets are opened to competition and (ii) cable companies are able to finance their existing commitments and entry into the local telephone business.

In my view, there is no logical link between the ability of existing cable undertakings to gain a foothold in local telecommunications markets and the desirability of competition in programming distribution markets. If such a quid pro quo was the basis for formulating public policy, we would not have competition in long distance service today. Apart from the practical difficulty, from a regulatory standpoint, of attempting to benchmark the state of competition in local telephony markets as a criterion for allowing for entry into programming distribution, there is an even more fundamental problem with the latest CCTA

proposal. What incentive would cable companies have to enter the market for local telephone service knowing that doing so would end their monopoly in program distribution? I remain convinced that the preferred course should be one of immediately setting about the task of removing regulatory barriers and allowing for a market driven transition to competition.

Cultural Objectives

I wish to underscore the fact that the Bureau fully recognizes the importance to the Government of promoting Canadian content and culture. I do not question this policy pursuit. What I have done, is raise questions about whether the existing mechanisms for meeting Canadian content and cultural objectives can be maintained in the face of rapid technological change and increased global and domestic competition. As you posed the question at the outset of this public hearing Mr. Chairman "What are our cultural objectives in a competitive environment, and how can we sustain and develop them?"

Convergence is bringing Canada's broadcasting and telecommunications policies to a crossroads. Recent developments, such as the introduction and marketing of new specialty channels and the introduction of DTH satellite services, suggest that the regulatory mechanisms in place today are already under pressure both domestically and internationally. That is why we have recommended that a review be undertaken at this time to determine the

Government's cultural policy objectives for the information highway and to assess whether alternative mechanisms are available which would be more efficient and sustainable for attaining these objectives.

Competitive Safeguards

Numerous parties have argued in their submissions that competition will only be "sustainable" if there are appropriate competitive safeguards. We have outlined in our submissions the specific competitive safeguards which we believe are necessary to deal with concerns over access and cross-subsidy. As I have noted, upon reviewing the submissions of other parties on the issue of competitive safeguards, I believe that the Commission should consider accelerating the timetable for introducing price cap regulation for utility telecommunications services.

Care must be taken not to confuse the need for safeguards to protect competition with attempts by industry participants to obtain protection from competition. Firms and industries may argue that their survival is essential to ensure that competition is "sustainable." However, in competitive markets, firms come and go. New entrants and incumbents alike must compete to earn and retain a place in the market.

In considering the need for competitive safeguards, the Commission will have to weigh the benefits of any specific safeguard against the direct and indirect costs which it may

impose on Canadians in terms of lost benefits of competition, products and services, and efficiency.

For example, many parties have advocated structural separation of the telephone companies broadband and narrowband services, or their programming and other services as an essential competitive safeguard. The Bureau does not dispute that this may be an effective safeguard against cross-subsidy. However, if narrowband and broadband services are to be offered from common facilities, structural separation may make little sense if significant economies of scale and scope are lost, or worse yet, this safeguard could act to deter competitive entry altogether. Additionally, there will still be regulatory costs to imposing structural separation. In my view, where significant economies of scale and scope are likely to exist, alternative safeguards such as moving the timetable for the introduction of price caps forward should be considered first.

There may, however, be more merit to considering some form of structural separation for content and programming services as opposed to distribution networks. In this case, there may not be significant economies of scale and scope and, for the telephone companies, it may be easier and less costly to impose this condition at the outset of their entry into broadband services. However, I would note in regard to concerns over access, that structural separation in and of itself would not appear to be a sufficient safeguard. Some form of complementary access rules would also be required. The question of establishing appropriate access rules was just

this week referred to the Commission by the Government. I would welcome the opportunity to participate in any public consultation process to consider this matter.

Finally, I want to make it clear that the *Competition Act* is not a substitute for regulation under the *Telecommunications* and *Broadcasting Acts*. As a safeguard, competition law differs from regulation in its objective and approach. Competition law seeks to foster the conditions necessary for a competitive marketplace. It sets the bounds of market rules within which firms are free to exploit opportunities and assume the risks and reap the rewards associated with their efforts. While the *Competition Act* has a role to play in communications industries, ultimately it will be competition, market forces and consumer choice which will take the place of regulation and determine success and failure in the marketplace.

In summary, I wish to stress to the Commission the following central points of my submissions:

- (1) The significance of the information highway to the economic and social life of Canada transcends the commercial interests of the telephone and cable companies;
- (2) Competition can and should play an important role in the development and operation of the information highway; and

- (3) The process of removing regulatory and other barriers to competition should begin now, lest we risk falling behind other nations in the development of an information based economy.

With those remarks Mr. Chairman, we are available to respond to any questions you and other members of the Commission may have.

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